Supreme Court, U.S.
FILED
MAR 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 85-1325

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CHRISTINE GREEN,

PETITIONER,

v.

OWENS-ILLINOIS, INC., AMERICAN FLINT GLASS WORKERS UNION OF NORTH AMERICA, AFL-CIO, LOCAL 700, and AMERICAN FLINT GLASS WORKERS UNION, AFL-CIO,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT OWENS-ILLINOIS, INC.'S BRIEF IN OPPOSITION

William L. Patberg
(Attorney of Record)
Stephen J. Stanford
Mary Ann Whipple
Fuller & Henry
1200 Edison Plaza
300 Madison Avenue
P.O. Box 2088
Toledo, Ohio 43603
Telephone: (419) 255-8220
Attorneys for Respondent Owens-Illinois, Inc.

20 pp

TABLE OF CONTENTS

Pages

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 5

CONCLUSION 10

APPENDIX

List of Corporate Respondent's Parent Companies, Subsidiaries and Affiliates Pursuant to Supreme Court Rule 28.1 ..... Rap. 1-4

TABLE OF AUTHORITIES

United States Supreme Court Decisions

	Pages
DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)	4-8
United Parcel Service v. Mitchell, 451 U.S. 56 (1981)	5, 6, 8

United States Court of Appeals Decisions

Edwards v. Sea-Land Service, Inc., 720 F.2d 857 (5th Cir. 1983)	7
Edwards v. Teamsters Local Union No. 36, 719 F.2d 1036 (9th Cir. 1983), cert. denied, 104 S. Ct. 1599 (1984)	8
Ernst v. Indiana Bell Telephone Company, Inc., 717 F.2d 1036 (7th Cir. 1983), cert. denied, 464 U.S. 1041 (1984)	7
Graves v. Smith's Transfer Corporation, 736 F.2d 819 (1st Cir. 1984)	7
Landahl v. PPG Industries, Inc., 746 F.2d 1312 (7th Cir. 1984)	7
Lawson v. Truck Drivers, Local Union 100, 698 F.2d 250 (6th Cir. 1983), cert. denied, 464 U.S. 814 (1984).....	6

TABLE OF AUTHORITIES (cont'd)

	Pages
Lincoln v. District of International Association of Machinists, 723 F.2d 627 (8th Cir. 1983)	8
McNaughton v. Dillingham Corporation, 707 F.2d 1042 (9th Cir. 1983), cert. denied, 105 S.Ct. 291 (1984)	5
Murray v. Branch Motor Express Company, 723 F.2d 1146 (4th Cir. 1983), cert. denied, 105 S.Ct. 292 (1984)	7
Perez v. Dana Corporation, 718 F.2d 581 (3d Cir. 1983)	7
Rogers v. Lockheed-Georgia Company, 720 F.2d 1247 (11th Cir. 1983), cert. denied, 105 S.Ct. 292 (1984).	8
Statutes	
29 U.S.C. §160, National Labor Relations Act, §10(b)	6
29 U.S.C. §185, Labor-Management Relations Act, §301	3-8
42 U.S.C. §1981	3, 5, 9
42 U.S.C. §1985	3, 5, 9
Ohio Revised Code §2711.13	6
Federal Rules of Civil Procedure, Rule 56	9

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RESPONDENT OWENS-ILLINOIS, INC.'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

On April 21, 1974, petitioner (hereinafter "Ms. Green") fought with a fellow employee, Paulette Randelman, as they left

the Toledo, Ohio Libbey Glass Division plant of respondent Owens-Illinois, Inc. (hereinafter "Owens") at the end of their workday. Following a thorough investigation which included, among other things, taking written and oral statements from twenty witnesses, Owens terminated its employment of Ms. Green and Ms. Randleman for: (1) fighting on company property; (2) inciting or attempting to incite others to the use of violence; and (3) bearing weapons on company property.

Ms. Green was discharged on April 26, 1974. On May 31, 1974, Ms. Green's labor union determined not to pursue her grievance to arbitration. More than three years later, on October 25, 1977, she filed her complaint in the United States District Court for the Northern District of Ohio, Western Division ("District Court") after unsuccessfully litigating her claims before

the Ohio Bureau of Employment Services, the Ohio Civil Rights Commission, the Lucas County, Ohio Court of Common Pleas and Ohio's Sixth District Court of Appeals. She claimed a wrongful discharge from her employment and breach of her union's duty of fair representation in violation of Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185. Ms. Green also alleged race discrimination in violation of 42 U.S.C. §§1981 and 1985.

The District Court granted motions for summary judgment filed by Owens and Ms. Green's union. The District Court ruled that Ms. Green's Section 301 claims were time-barred under Ohio's ninety day limitations period for vacation of arbitration awards. With respect to Ms. Green's Sections 1981 and 1985 claims, the District Court held that, even if Ms. Green had made a prima facie showing of discrimination,

there were no genuine issues of material fact as to the reasons she was discharged by Owens. The unrebutted evidence established that Ms. Green was discharged for just cause, and that the reasons given for her discharge were not pretextual.

The United States Court of Appeals for the Sixth Circuit ("Sixth Circuit") affirmed the judgment of the District Court and denied Ms. Green's subsequent petition for a rehearing. The Sixth Circuit applied this Court's decision respecting the statute of limitation for Section 301 claims in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), retroactively. As to Ms. Green's discrimination claims, the Sixth Circuit found that the District Court was "clearly correct" and that the "affidavits and other evidence submitted fully satisfy the court that plaintiff could submit no set of facts

entitling her to prevail were the case to go to trial on her claims under Sections 1981 and 1985."

REASONS FOR DENYING THE WRIT

Ms. Green waited more than three years to file her claims of breach of the duty of fair representation and wrongful discharge under LMRA Section 301. Her cause of action predicated upon Section 301 accrued on May 31, 1974 when her union determined not to pursue Ms. Green's grievance through arbitration. See McNaughton v. Dillingham Corp., 707 F.2d 1042, 1046 (9th Cir. 1983), cert. denied, 105 S.Ct. 291 (1984). She filed her action in the District Court on October 25, 1977. In United Parcel Service v. Mitchell, 451 U.S. 56 (1981), this Court proclaimed that the timeliness of Section 301 wrongful discharge claims was to be measured by the state statute of limitations for the vacation of arbitration

awards. Subsequently the Court held in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), that the six month limitation period under Section 10(b) of the National Labor Relations Act, 29 U.S.C. §160(b) applied to Section 301 suits alleging breach of an employment agreement and breach of a union's duty of fair representation. In this case, the District Court declined to apply DelCostello retroactively. Instead, the District Court relied upon Mitchell and the Sixth Circuit decision in Lawson v. Truck Drivers, Local Union 100, 698 F.2d 250 (6th Cir. 1983), cert. denied, 464 U.S. 814 (1984), and applied the ninety-day limitation period in Ohio Revised Code §2711.13 for the vacation of arbitration awards. Disagreeing with the District Court, the Sixth Circuit held that

DelCostello should be applied retroactively.

The Sixth Circuit's decision is in accordance with holdings of the First, Third, Fourth, Fifth, Seventh, Eighth, and Eleventh Circuits that DelCostello is to be applied retroactively to Section 301 claims. See Graves v. Smith's Transfer Corporation, 736 F.2d 819 (1st Cir. 1984); Perez v. Dana Corporation, 718 F.2d 581 (3d Cir. 1983); Murray v. Branch Motor Express Company, 723 F.2d 1146 (4th Cir. 1983); cert. denied, 105 S.Ct. 292 (1984); Edwards v. Sea-Land Service, Inc., 720 F.2d 857 (5th Cir. 1983); Ernst v. Indiana Bell Telephone Company, Inc., 717 F.2d 1036 (7th Cir. 1983), cert. denied, 464 U.S. 1041 (1984); Landahl v. PPG Industries, Inc., 746 F.2d 1312 (7th Cir. 1984); Lincoln v. District 1 of the International Association of Machinists, 723 F.2d 627 (8th Cir.

1983); Rogers v. Lockheed-Georgia Company, 720 F.2d 1247 (11th Cir. 1983); cert. denied, 105 S.Ct. 292 (1984). Only the Ninth Circuit has declined to apply DelCostello retroactively. See Edwards v. Teamsters Local Union No. 36, 719 F.2d 1036 (9th Cir. 1983), cert. denied, 104 S.Ct. 1599 (1984). However, in Edwards the Ninth Circuit applied the state statute of limitations which had been borrowed from state law pursuant to Mitchell. In this case, regardless of whether the six-month limitation period applies pursuant to DelCostello or the state law ninety-day limitation period applies pursuant to Mitchell, plaintiff's Section 301 claims are time-barred. The result would not change even if this Court declined to apply DelCostello retroactively.

In view of the essential agreement among the circuits respecting

retroactive application of DelCostello; of this Court's own retroactive application of the rule in DelCostello itself; and of the uniformity of result in this case even if DelCostello is not retroactively applied, Ms. Green has failed to articulate any reason supporting review of the Sixth Circuit's dismissal of her section 301 claims.

With respect to Ms. Green's discrimination claims, her petition demonstrates that she is simply inviting this Court to undertake a wholesale reanalysis of the evidence below. She has failed to articulate any special or important reasons why review of the Sixth Circuit's decision is necessary. Two federal courts have already been satisfied from a review of the evidence that Ms. Green could not present any set of facts which would entitle her to prevail at trial on her claims of race



discrimination. In so doing, both federal courts expressly applied the clear, well-established legal standards governing Rule 56 of the Federal Rules of Civil Procedure and Sections 1981 and 1985. As to her discrimination claims, Ms. Green has not pointed to any conflicts between the federal courts of appeals; identified any way in which either of the lower federal courts have so departed from the accepted and usual course of judicial proceedings as to induce the necessity of this Court's power of supervision; or specified any important, unsettled federal questions which should be decided by this Court.

CONCLUSION

Ms. Green has failed to establish that the Sixth Circuit's decision is incorrect or in irreconcilable conflict with another federal court of appeals decision; nor does the instant case present a novel question

which has not yet been addressed by this Court. Ms. Green's invitation to this Court to recapitulate all of the evidence analyzed by the courts below must be declined, and her Petition for a Writ of Certiorari to the Sixth Circuit should be denied.

Respectfully submitted,

William L. Patberg
(Attorney of Record)
Stephen J. Stanford
Mary Ann Whipple
Fuller & Henry
1200 Edison Plaza
300 Madison Avenue
P.O. Box 2088
Toledo, Ohio 43603
Telephone: (419)
255-8220
Attorneys for Respondent
Owens-Illinois, Inc.

APPENDIX

Rap. 1

List of Corporate Respondent's Parent Companies, Subsidiaries and Affiliates Pursuant to Supreme Court Rule 28.1

Alliance Mortgage Company
Jacksonville, FL
Andover Controls Corporation,
Andover, MA
Automatic Inspection Devices, Inc.
Toledo, OH
Owens-Illinois Finance Corporation
Toledo, OH
Owens Insurance Ltd.
Hamilton, Bermuda
Universal Materials, Inc.
Mogadore, OH
U.S. Cap & Closure, Inc.
Chicago, IL
Hygienic-Lily Limited
New Zealand
Sun-Lily Company, Ltd.
Japan
Marinette, Tomahawk & Western
Railroad Company
Tomahawk, WI
Sabine River & Northern Railroad Company
Orange, TX
Valdosta Southern Railroad Company
Clyattville, GA
Owens-Illinois Development Corporation
Toledo, OH
Emballages Laurent, S.A.
France
Papeteries d'Espaly S.A.R.L.
France
Papeteries Etienne, S.A.
France

Kraft, S.A.
Mexico
Cajas Corrugades de Mexico, S.A.
Mexico
Cajas y Empaques de Occidente, S.A.
Mexico
Cajas y Empaques del Pacifico, S.A.
Mexico
Companhia Industrial Sao Paulo Rio
Brazil
Vina Santa Rita, Ltda.
Chile
Cristaleria Peldar, S.A.
Colombia
Industrial de Materas Primos S.A.
Colombia
Compania de Vidrios
Owens-Illinois de Cuba, S.A.
Cuba
Cristaleria del Ecuador, S.A.
Ecuador
Middle East Glass Manufacturing Company
Egypt
Hellenic-Owens Elefsis Glass Company, S.A.
Greece
P.T. Kangar Consolidated Industries
Indonesia
Union Glass and Container Corporation
Philippines
Owens-Illinois de Puerto Rico
Puerto Rico
Consol Limited
South Africa
Giralt Laporta, S.A.
Spain
Owens-Illinois International, S.A.
Switzerland
United Glass Moldings plc
United Kingdom

United Glass Ltd.
United Kingdom
Fabrica de Vidrio Los Andes, C.A.
Venezuela
Manufacturera de Vidrios Planos, C.A.
Venezuela
Owens-Illinois de Venezuela, C.A.
Venezuela
Owens-Illinois (Ventas) S.A.
Venezuela
Gerresheim Group
West Germany
Health Care and Retirement
Corporation of America
Lima, OH
Prudent Supply, Inc.
Minneapolis, MN
Kontes Glass Company
Vineland, NJ
O-I Schott Process Systems, Inc.
Vineland, NJ
P.T. Igar Jaya
Indonesia
Kimble Italiana, S.p.A.
Italy
Envases de Borosilicato, S.A.
Mexico
FBG-Trident Limited
United Kingdom
Buender Glas Gmbh
West Germany
L.E. Smith Glass Co.
Mt. Pleasant, PA
Durobor, S.A.
Belgium
Libbey St. Clair Inc.
Canada
Sasaki-Owens Glass Co., Ltd.
Japan

Dougherty Brothers Company
Buena, NJ
Sullivan, IN
Fort Worth, TX
Treitler-Owens, Inc.
Washington, NJ
Cristal Owens Plastics, Ltda.
Chile
Nippon Electric Glass Company, Ltd.
Japan
Hankuk Electric Glass Co., Ltd.
Korea